

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

ANDREA MASSE, individually and as)
Guardian and Next Friend of Taylor Lee)
Delaney, a minor,)

Case No.

2004 DEC -9 P 1:45
04-467-JM

PLAINTIFF,)

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)
(ORIGINAL JURISDICTION)**

v.)

FIDELITY SECURITY LIFE)
INSURANCE COMPANY,)

DEFENDANT.)

TO: CLERK OF COURT, UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Thomas C. Craig, Esq, Counsel for the Plaintiff
THOMAS C. CRAIG, P.A.
99 Stark Street
Manchester, NH 03101

Pursuant to 28 U.S.C. § 1441(b), the Defendant hereby gives notice of removal of this action from the Hillsborough County Superior Court, Northern District (Docket No. 04-C-843), where it is now pending, to the United States District Court for the District of New Hampshire. In support of this Notice of Removal, the defendant states as follows:

1. On or about November 9, 2004, counsel for the defendant Fidelity Security Life Insurance Company ("Fidelity Insurance") received plaintiff's Writ of Summons. A true and accurate copy of plaintiff's Writ of Summons is attached as Exhibit 1.
2. This Notice is filed pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1441 and 1446, which provide for the removal of any civil action where there is a claim or right arising under the Constitution, treaties or laws of the United States, without regard to the citizenship or residence of the parties.

3. This removal is timely under 28 U.S.C. § 1446(b) as it was filed within thirty (30) days of receipt by Fidelity Insurance of the initial pleading setting forth plaintiff's claims for relief upon which this action is based.

4. Pursuant to 28 U.S.C. § 1441(a), the United States District Court for the District of New Hampshire is the federal district court for the district embracing the place where the state court action is pending.

ORIGINAL JURISDICTION

5. At all times relevant, this Court has had and does have original subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441(b) because plaintiff's civil action arises out of the Constitution, laws or treaties of the United States.

6. Based on the allegations in plaintiff's Writ of Summons, the plaintiff's claims arise out of an employer sponsored, self-funded medical plan which is governed by the provisions of the Federal Employee Retirement Income Security Act ("ERISA"). Specifically, in Count I, plaintiff seeks payment for medical charges which she paid on behalf of Branden Delaney. Plaintiff alleges that Fidelity Insurance has a duty, pursuant to a group term life insurance contract issued to Delaney's employer, to reimburse plaintiff for these charges. See Plaintiff's Writ of Summons, Exhibit 1.

7. The insurance contract at issue is governed by the Federal ERISA laws, which grants this Court original jurisdiction over the matter. As a result, this action is properly removed from the Hillsborough County Superior Court to the United States District Court for the District of New Hampshire.

8. This Court has pendant jurisdiction over plaintiff's remaining claims pursuant to 28 U.S.C. § 1441(c).

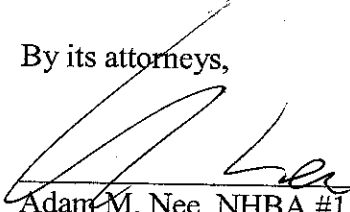
9. On this date, the defendant is serving upon plaintiff's counsel Notice of Filing of Notice of Removal with the Clerk of Court for the Hillsborough County Superior Court, Northern District, in accordance with 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing of Notice of Removal is attached as Exhibit 2.

WHEREFORE, the Defendant hereby removes the above-captioned action from the Hillsborough Superior Court, Northern District, to the United States District Court for the District of New Hampshire.

Defendant

FIDELITY SECURITY LIFE
INSURANCE COMPANY,

By its attorneys,



Adam M. Nee, NHBA #15865
DONOVAN HATEM LLP
Two Seaport Lane
Boston, MA 02210
Telephone: (617) 406-4500

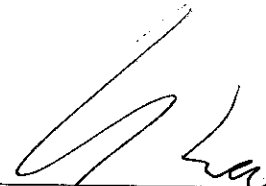
CERTIFICATE OF SERVICE

I, Adam M.Nee, hereby certify that on this 9 day of December, 2004 I caused a copy of the foregoing:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (ORIGINAL JURISDICTION),

to be mailed, postage prepaid to:

Thomas C. Craig, Esq,
Thomas C. Craig, P.A.
99 Stark Street
Manchester, NH 03101


Adam M. Nee

00881830